IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.38 OF 2006

Echjay Forging Pvt. Ltd. ..Petitioner.

V/s.

The Union of India & Ors. ..Respondents.

Mr.Prakash Shah i/b. PDS legalfor petitioner.

Mrs.S.V.Bharucha with K.B. Rao for respondents.

CORAM : Dr.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATED : 16TH JANUARY, 2006.

P.C. :-

1. Heard learned counsel for the petitioner and respondents.

2. Rule, made returnable forthwith.

3. Learned counsel for the respondents waives service.

4. Heard the petition finally by consent of parties.

5. By this petition, the petitioner is challenging the order dated 27th October, 2005 wherein the Commissioner of Central Excise (Appeals) has

directed the petitioner to make a pre-deposit of 25% of the duty demanded and 25% of the penalty imposed within two weeks from the receipt of the order.

6. Mr.Shah, learned counsel appearing on behalf of the petitioner submits that it is an admitted position that the job worker had already paid the excise duty to the respondents and, therefore, the petitioner was entitled to take credit of that duty which was paid by the job worker. Mr.Shah also referred to the Judgment in the case of **Rajendra Mechnical Industries Ltd. V/s. CCE, Mumbai** reported in **2002 (150 E.L.T. 1170 (Tri.Mumbai)** which Judgment was not taken into account by the Tribunal while passing the impugned order. Having regard to the aforesaid facts and circumstances of the case, we quash and set aside the the order dated 27th October, 2005 and direct the Commissioner of Central Excise (Appeals), Mumbai to decide the application or decide the appeal itself on merits, as he may deem fit, afresh in the light of the aforesaid Judgment, strictly in accordance with law, as expeditiously as possible.

7. Petition is allowed. Rule is made absolute in the above terms with no order as to costs.

(Dr.S.RADHAKRISHNAN,J.)

(J. P. DEVADHAR, J.)